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ATTORNEY DOCKET NO. 14114.0325U2
PATENT

1645

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
Zancopé-Oliveira et al.)
Serial No. 09/674,195) Group Art Unit: 1645
Filed: October 26, 2000) Examiner: Navarro, A. M.
For: NUCLEIC ACIDS OF THE M ANTIGEN)
GENE OF *HISTOPLASMA CAPSULATUM*,)
ANTIGENS, VACCINES AND)
ANTIBODIES, METHODS AND KITS)
FOR DETECTING HISTOPLASMOSIS)

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ELECTION UNDER RESTRICTION REQUIREMENT

Commissioner for Patents
Washington, D.C. 20231

NEEDLE & ROSENBERG, P.C.
The Candler Building
127 Peachtree Street, N.E.
Atlanta, Georgia 30303-1811

July 10, 2002

Sir:

In response to the restriction requirement of April 10, 2002, Applicants provisionally elect, with traverse, Group I, claims 1-9, 16-20 and 31-33, drawn to DNA.

Applicants traverse the Restriction Requirement as being improper and request that Groups I and II, drawn to DNA and to polypeptides, respectively, be examined together. Specifically, while Group I is drawn to DNA and Group II, claims 10-15, 29-30 and 41-44, is drawn to polypeptides, there exists a relationship between the DNA of Group I and the polypeptides of Group II such that any proper search of the art for examination of Group II will necessarily require a search of the literature inclusive of references pertinent for examination of Group I. Specifically, DNA of Group I includes DNA that encodes polypeptides of Group II and the polypeptides of Group II includes polypeptides encoded by DNA of Group I.

Correspondingly, Applicants submit that there is no further burden on the Examiner in examining both Groups I and II together than there is in examining either one of Group I or Group II.

Applicants therefore request that the restriction requirement be reconsidered because the Examiner has not shown that a serious burden would result if all of the claims are examined together. M.P.E.P. § 803 provides that "[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." (*Emphasis added.*) Thus, for a restriction requirement to be proper, the Examiner must satisfy the following two criteria: (1) the existence of independent and distinct inventions (35 U.S.C. § 121) and (2) the search and examination of the entire application cannot be made without serious burden. *See* M.P.E.P. § 803. The Examiner has not shown that the *second* requirement has been met. Specifically, the Examiner has not shown that it would be a serious burden to search and examine the claims of Groups I and II together, since a search directed to the claims of Group I will necessarily also include the art that is directed to the claims of Groups II.

Applicants further request that the Examiner take note that the Attorney Docket No./Title indicated in communications from the USPTO is in error. The Attorney Docket No. for this matter is 14114.0325U2. Accordingly, Applicants request that the Patent Office enter the appropriate corrected Attorney Docket Number, specifically, 14114.0325U2.

Credit Card Payment Form PTO-2038 authorizing payment in the amount of \$400.00 and a Request for Extension of Time are enclosed. This amount is believed to be correct. However, the Commissioner is hereby authorized to charge any fee which may be required, or to credit any overpayment, to Deposit Account No. 14-0629.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on the date shown below.

Gwendolyn D. Spratt 7-10-02
Gwendolyn D. Spratt Date